IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 2294 of 2007()

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OR.3/2007 OF KOTTIYOOR FOREST RANGE OFFICE
CMP 578/07 JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR

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PETITIONER:

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JAMES JOSEPH, S/O. JOSEPH,
SASSERIYIL HOUSE, AYYANKUNNU, THALASSERY.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: RESPONDENT

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THE STATE OF KERALA, REPRESENTED BY
FOREST RANGE OFFICER, KOTTIYOOR,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.M.C.No. 2294 of 2007

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Dated this the 3rd day of August, 2007

**O R D E R**

The vehicle of the petitioner has been seized on the allegation that it was used for the commission of a forest offence. The seized vehicle was produced before the learned Magistrate. It is submitted that proceedings under Section 61A of the Kerala Forest Act is also in progress. The petitioner has applied before the learned Magistrate for release of the vehicle. The learned Magistrate, by the impugned order, rejected the prayer for release of the vehicle. The petitioner has come to this Court challenging the said order, copy of which is produced as Annex.A1. It is unnecessary to go into the various contentions raised.

2. The learned Prosecutor only submits that if release of the vehicle is being ordered to the petitioner, it may be subject to appropriate and strict conditions, including deposit of the value of the vehicle or to produce bank guarantee.

3. I have considered all the relevant inputs. I must alertly remind myself the dictum in **Sunderbhai Ambalal Desai** v. **State of Gujarat** (AIR 2003 SC 638). All courts have to ensure that the

properties produced before it are not subjected to unnecessary damage, deterioration and decay. In this view of the matter, I am satisfied that the vehicle can be released to the petitioner, subject to appropriate conditions.

4. The next question is what condition must be imposed. I am of opinion that such conditions which shall ensure that the vehicle or its value is secured. It is not necessary to be doctrinaire or dogmatic. Appropriate conditions can be imposed which shall ensure that the vehicle or its value is available in court. The vehicle in this case is stated to be a mini lorry. Neither side is able to give me the assessment of the value of the vehicle.

5. This Crl.M.C. is allowed. The vehicle shall be released to the petitioner on the following terms and conditions by the learned Magistrate.

(1) The petitioner shall produce all documents before the learned Magistrate to show that he is the person entitled to possession of the vehicle.

(2) The learned Magistrate shall get the value of the vehicle competently assessed as early as possible. The petitioner shall deposit in court one-fourth of such value of the vehicle as ascertained by the Magistrate.

(3) He shall execute a bond for the entire value of the vehicle with two solvent sureties each for the like sum to the satisfaction of the learned

Magistrate. The learned Magistrate shall scrupulously ensure that the sureties produced are sufficient and solvent.

(4) The petitioner, in the bond to be executed by him, shall specifically undertake to produce the vehicle before the learned Magistrate as and when directed and before the authorities under Section 61A of the Kerala Forest Act, if a valid direction is issued by such authority eventually.

**(R. BASANT)**
Judge

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